

§ 239.57

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complied with all laws applicable to the conversion.

§ 239.57 Proxy solicitation.

(a) *Applicability of proxy solicitation provisions.* (1) The mutual holding company must comply with these proxy solicitation provisions when the mutual holding company provides proxy solicitation material to members for the meeting to vote on the plan of conversion.

(2) Members of the mutual holding company must comply with these proxy solicitation provisions when they provide proxy solicitation materials to members for the meeting to vote on the conversion, pursuant to paragraph (f) of this section except where:

(i) The member solicits 50 people or fewer and does not solicit proxies on behalf of the mutual holding company; or

(ii) The member solicits proxies through newspaper advertisements after the board of directors adopts the plan of conversion. Any newspaper advertisements may include only the following information:

(A) The name of the mutual holding company;

(B) The reason for the advertisement;

(C) The proposal or proposals to be voted upon;

(D) Where a member may obtain a copy of the proxy solicitation material; and

(E) A request for the members of the mutual holding company to vote at the meeting.

(b) *Form of proxy.* The form of proxy must include all of the following:

(1) A statement in bold face type stating that management is soliciting the proxy.

(2) Blank spaces where the member must date and sign the proxy.

(3) Clear and impartial identification of each matter or group of related matters that members will vote upon. It must include any proposed charitable contribution as an item to be voted on separately.

(4) The phrase “Revocable Proxy” in bold face type (at least 18 point).

(5) A description of any charter or state law requirement that restricts or conditions votes by proxy.

(6) An acknowledgment that the member received a proxy statement before he or she signed the form of proxy.

(7) The date, time, and the place of the meeting, when available.

(8) A way for the member to specify by ballot whether he or she approves or disapproves of each matter that members will vote upon.

(9) A statement that management will vote the proxy in accordance with the member’s specifications.

(10) A statement in bold face type indicating how management will vote the proxy if the member does not specify a choice for a matter.

(c) *Permissible use of proxies.* (1) The mutual holding company may not use previously executed proxies for the plan of conversion vote. If members consider the plan of conversion at an annual meeting, the mutual holding company may vote proxies obtained through other proxy solicitations only on matters not related to the plan of conversion.

(2) The mutual holding company may vote a proxy obtained under this subpart on matters that are incidental to the conduct of the meeting. The mutual holding company or its management may not vote a proxy obtained under this subpart at any meeting other than the meeting (or any adjournment of the meeting) to vote on the plan of conversion.

(d) *Proxy statement requirements*—(1) *Content requirements.* The mutual holding company must prepare the proxy statement in compliance with this subpart and Form PS. The mutual holding company may obtain Form PS from the appropriate Reserve Bank and the Board’s Web site (<http://www.federalreserve.gov>).

(2) *Other requirements.* (i) The Board will review the proxy solicitation material in its review of the application for conversion.

(ii) The mutual holding company must provide a written proxy statement to the members before or at the same time the mutual holding company provides any other soliciting material. The mutual holding company must mail proxy solicitation material to the members no later than ten days after the Board approves the conversion.

(e) *Filing revised proxy materials.* (1) The mutual holding company must file revised proxy materials as an amendment to the application for conversion.

(2) To revise the proxy solicitation materials, the mutual holding company must file:

(i) Revised proxy materials as required by Form PS;

(ii) Revised form of proxy, if applicable; and

(iii) Any additional proxy solicitation material subject to paragraph (d) of this section.

(3) The mutual holding company must clearly indicate changes from the prior filing.

(4) The mutual holding company must file a definitive copy of all proxy solicitation material, in the form in which the mutual holding company furnishes the material to the members. The mutual holding company must file no later than the date that it sends or gives the proxy solicitation material to the members. The mutual holding company must indicate the date that it plans to release the materials.

(5) Unless the Board requests the mutual holding company to do so, the mutual holding company does not have to file copies of replies to inquiries from the members or copies of communications that merely request members to sign and return proxy forms.

(f) *Mailing proxy solicitation material.* (1) The mutual holding company must mail the member's proxy solicitation material if:

(i) The board of directors adopted a plan of conversion;

(ii) A member requests in writing that the mutual holding company mail the proxy solicitation material; and

(iii) The member agrees to defray reasonable expenses of the mutual holding company.

(2) As soon as practicable after the mutual holding company receives a request under paragraph (f)(1) of this section, the mutual holding company must mail or otherwise furnish the following information to the member:

(i) The approximate number of members that the mutual holding company solicited or will solicit, or the approximate number of members of any group of account holders that the member designates; and

(ii) The estimated cost of mailing the proxy solicitation material for the member.

(3) The mutual holding company must mail proxy solicitation material to the designated members promptly after the member furnishes the materials, envelopes (or other containers), and postage (or payment for postage) to the mutual holding company.

(4) The mutual holding company is not responsible for the content of a member's proxy solicitation material.

(5) A member may furnish other members its own proxy solicitation material, subject to the rules in this section.

(g) *Prohibited solicitations*—(1) *False or misleading statements.* (i) No one may use proxy solicitation material for the members' meeting if the material contains any statement which, considering the time and the circumstances of the statement:

(A) Is false or misleading with respect to any material fact;

(B) Omits any material fact that is necessary to make the statements not false or misleading; or

(C) Omits any material fact that is necessary to correct a statement in an earlier communication that has become false or misleading.

(ii) No one may represent or imply that the Board determined that the proxy solicitation material is accurate, complete, not false or not misleading, or passed upon the merits of or approved any proposal.

(2) *Other prohibited solicitations.* No person may solicit:

(i) An undated or post-dated proxy;

(ii) A proxy that states it will be dated after the date it is signed by a member;

(iii) A proxy that is not revocable at will by the member; or

(iv) A proxy that is part of another document or instrument.

(3) If a solicitation violates this section, the Board may require remedial measures, including:

(i) Correction of the violation by a retraction and a new solicitation;

(ii) Rescheduling the members' meeting; or

(iii) Any other actions necessary to ensure a fair vote.

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(4) The Board may also bring an enforcement action against the violator for violations of this section.

(h) *Re-soliciting proxies.* If the mutual holding company amends its application for conversion, the Board may require it to re-solicit proxies for the members' meeting as a condition of approval of the amendment.

§ 239.58 Offering circular.

(a) *Filing requirements.* (1) The mutual holding company must prepare and file the offering circular with the appropriate Reserve Bank in compliance with this subpart and Form OC. The mutual holding company may obtain Form OC from the Reserve Bank and the Board's Web site (<http://www.federalreserve.gov>).

(2) The mutual holding company must condition the stock offering upon member approval of the plan of conversion.

(3) The Board will review the Form OC and may comment on the included disclosures and financial statements.

(4) The mutual holding company must file a revised offering circular, final offering circular, and any post-effective amendment to the final offering circular.

(5) The Board will not approve the adequacy or accuracy of the offering circular or the disclosures.

(b) *Distribution of the offering circular.* (1) The mutual holding company may distribute a preliminary offering circular at the same time as or after the mutual holding company mails the proxy statement to its members.

(2) The mutual holding company must distribute the offering circular in accordance with this subpart and with all applicable securities laws.

(3) The mutual holding company must distribute the offering circular to persons listed in the plan of conversion no later than ten days after the Board approves the conversion.

(c) *Post-effective amendments to the offering circular.* (1) The mutual holding company must file a post-effective amendment to the offering circular with the Board when a material event or change of circumstance occurs.

(2) After the Securities and Exchange Commission declares the post-effective amendment effective, the mutual hold-

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ing company must immediately deliver the amendment to each person who subscribed for or ordered shares in the offering.

(3) The post-effective amendment must indicate that each person may increase, decrease, or rescind their subscription or order.

(4) The post-effective offering period must remain open no less than 10 days nor more than 20 days, unless the Board approves a longer rescission period.

§ 239.59 Offers and sales of stock.

(a) *Purchase priorities.* The mutual holding company must offer to sell the conversion shares in the following order:

(1) Eligible account holders.

(2) Tax-qualified employee stock ownership plans.

(3) Supplemental eligible account holders.

(4) Other voting members who have subscription rights.

(5) The community, the community and the general public, or the general public.

(b) *Offering conversion shares.* (1) The mutual holding company may offer to sell the conversion shares if the Board approves the conversion, subject to compliance with requirements of the Securities and Exchange Commission.

(2) The offer may commence at the same time as the proxy solicitation of the members begins.

(c) *Pricing conversion shares.* (1) The conversion shares must be sold at a uniform price per share and at a total price that is equal to the estimated pro forma market value of the shares after conversion.

(2) The maximum price must be no more than 15 percent above the midpoint of the estimated price range in the offering circular.

(3) The minimum price must be no more than 15 percent below the midpoint of the estimated price range in the offering circular.

(4) If the Board permits, the maximum price of conversion shares sold may be increased. The maximum price, as adjusted, must be no more than 15 percent above the maximum price computed under paragraph (c)(2) of this section.